

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MONTANA  
BILLINGS DIVISION

|                                |   |                                |
|--------------------------------|---|--------------------------------|
| LEWIS ELDON HUFFINE,           | ) | Cause No. CV 07-85-BLG-RFC-CSO |
|                                | ) |                                |
| Petitioner,                    | ) |                                |
|                                | ) |                                |
| vs.                            | ) | FINDINGS AND RECOMMENDATION    |
|                                | ) | OF U.S. MAGISTRATE JUDGE       |
| YELLOWSTONE COUNTY DETENTION ) | ) |                                |
| CENTER, SHERIFF, BILLINGS,     | ) |                                |
| MONTANA,                       | ) |                                |
|                                | ) |                                |
| Respondent.                    | ) |                                |
| _____                          | ) |                                |

On June 12, 2007, Petitioner Eldon Huffine submitted a petition for writ of habeas corpus. He is a federal prisoner proceeding *pro se*.

Huffine failed to include either the filing fee or a motion to proceed *in forma pauperis* with his petition.<sup>1</sup> A \$5.00 filing fee or a motion to proceed *in forma pauperis* is required. *See* 28 U.S.C. §§ 1914(a), 1915(a). On June 21, 2007, Huffine was ordered to show cause on or before July 6, 2007, why his petition should not be dismissed on the grounds that he failed to pay the filing fee or move to proceed *in forma pauperis*. Mail sent to Huffine on the same day he filed the petition was

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<sup>1</sup> Huffine has already been advised that he may not pursue a motion under 28 U.S.C. § 2255 while his appeal remains pending in the Ninth Circuit Court of Appeals. *See* Order (doc. 107) at 1-2, *United States v. Huffine*, No. CR 05-19-BU-DWM (D. Mont. filed May 1, 2007). There is no fee for filing a § 2255 motion, but there is a \$5.00 fee for filing a petition for writ of habeas corpus.

returned as undeliverable, as was the Order to Show Cause.

Based on the foregoing, the Court enters the following:

**RECOMMENDATION**

The Petition (doc. 1) should be DISMISSED without prejudice for failure to pay the filing fee or move to proceed in forma pauperis.

**NOTICE OF RIGHT TO OBJECT TO FINDINGS & RECOMMENDATION AND  
CONSEQUENCES OF FAILURE TO OBJECT**

Pursuant to 28 U.S.C. § 636(b)(1), Petitioner may serve and file written objections to this Findings and Recommendations within ten business days of the date entered, as indicated on the Notice of Electronic Filing. A district judge will make a de novo determination of those portions of the Findings and Recommendations to which objection is made. The district judge may accept, reject, or modify, in whole or in part, the Findings and Recommendations. Failure to timely file written objections may bar a de novo determination by the district judge.

Huffine must immediately inform the Court of any change in his mailing address by filing a “Notice of Change of Address” referring to this case number.

DATED this 12th day of July, 2007.

/s/ Carolyn S. Ostby

Carolyn S. Ostby  
United States Magistrate Judge